IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CRIMINAL APPLICATION No. 1451 of 2007

For Approval and Signature:

HONOURABLE MR.JUSTICE M.R. SHAH

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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ASHOKJI RAVTAJI THAKORE(DALANI) - Applicant(s)
Versus
STATE OF GUJARAT & 2 - Respondent(s)

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Appearance :
MR SK GADHAVI for Applicant(s) : 1,
PUBLIC PROSECUTOR for Respondent(s) : 1,
NOTICE UNSERVED for Respondent(s) : 2,
MR MEHUL H RATHOD for Respondent(s) : 3,

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CORAM : HONOURABLE MR.JUSTICE M.R. SHAH

Date : 06/09/2007

ORAL JUDGMENT

Rule. Shri Mengdey, ld. APP waives service of rule on behalf of respondent Nos.1 and 2 and Shri Rathod, learned advocate waives service of rule on

behalf of the respondent No.3.

2. With the consent of the learned advocates appearing on behalf of the respective parties, the matter is taken up for final hearing today.

3. By way of this petition under Articles 226 and 227 of the Constitution of India r/w section 482 of Criminal Procedure Code, the petitioner, - original accused has prayed for an appropriate order quashing and set aside the FIR being C.R. No. 116/07 dtd 26-6-07 registered at Deesa city Police Station.

4. An FIR is registered at Deesa city Police Station by the respondent No.3 herein, - original complainant being C.R. No.I 116/07 dtd 26-6-07 against the petitioner for the offence punishable u/s 336 r/w 114 of the IPC alleging inter alia that the petitioner and others have kidnapped/ abducted his wife Sejalben. It is alleged in the complaint that the complainant had married with said Sejalben before five years. Being aggrieved by the said FIR, the petitioner, who also claims to be the husband of said Sejalben has preferred the present application to quash and set aside the said FIR as said Sejalben has not been abducted by them, but said Sejalben had gone voluntarily with the petitioner and the petitioner and the petitioner and said Sejalben had married on 29-6-07 and the said marriage is also registered. It is submitted that when the petitioner and said Sejalben had married with each other on 29-6-07

and when said Sejalben had gone voluntarily with the petitioner, it cannot be said that the petitioner has committed any offence u/s 366 r/w 114 of the IPC and therefore, it is submitted that to continue the said proceedings against the petitioner would be abuse of process of Court and unnecessary harassment to the petitioner and therefore, it is requested to quash and set aside the impugned FIR. It is further submitted on behalf of the petitioner that as such the wife of the petitioner i.e. Sejalben herself preferred Special Criminal Application No.1435/07 before this Court for quashing and setting aside the impugned FIR by submitting that she has voluntarily gone with the petitioner. However, the said petition came to be withdrawn with a liberty to file fresh application by the petitioner and therefore, the present application has been filed and therefore, it is requested to quash and set aside the impugned FIR.

5. Shri Mehul Rathod, learned advocate appearing on behalf of the respondent No.3, - original complainant while opposing the present application has submitted that said Sejalben is the wife of the petitioner and in fact, she has run away with ornaments and other valuables and the said ornaments and other valuables are with the petitioner and therefore, it is requested not to exercise powers u/s 482 of Criminal Procedure Code and not to quash and set aside the impugned complaint/FIR at this stage.

6. Shri Mengdey, ld. APP has requested to pass appropriate order considering the averments and allegations in the complaint as well as statement of said Sejalben reflected in Special Criminal Application No.1435/07.

7. Heard the learned advocates appearing on behalf of the respective parties.

8. At the outset, it is to be noted that in the impugned FIR, the allegation against the petitioner is only for the offences u/s 366 r/w section 114 of the IPC alleging inter alia that the petitioner has abducted his wife Sejalben and there are no further allegations. Now, it appears from the averments in the Special Criminal Application No.1435/07 filed by Sejalben, while requesting to quash and set aside the impugned FIR that said Sejalben has voluntarily gone with the petitioner and that even she has disputed the marriage with the original complainant. It appears that the petitioner has married with said Sejalben on 29-6-07 and that their marriage is also registered with the Registrar of Companies. Now considering the above, it cannot be said that the petitioner has committed any offence u/s 366 of the IPC. Under the circumstances, to continue the criminal proceedings against the petitioner would be abuse of process of Court and unnecessary harassment to the petitioner and Sejalben. Under the circumstances, this is a fit case to exercise powers u/s 482 of Criminal Procedure Code and to quash and set aside the impugned FIR. However,

while quashing and setting aside the said FIR, it is observed that this Court has considered the allegation against the petitioner for the offence u/s366 and 114 of the IPC only and no further allegation and if the original complainant and/or others are of the opinion that the petitioner and/or some other persons have committed some other offence, it will always be open for them to initiate appropriate proceedings, which shall be considered in accordance with law and on its own merits and the present petition be confined only with regard to impugned FIR and the allegations against the petitioner for the offence u/s 366 r/w 114 of the IPC.

9. For the reasons stated above, the petition succeeds. The impugned FIR being C.R. No. 116/07 dtd 26-6-07 registered at Deesa city Police Station is hereby quashed and set aside with above observations. Rule made absolute accordingly.

(M.R. Shah, J.)

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